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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/813,435

03/31/2004

Dennis Postupack

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HOWREY LLP - East

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EXAMINER

LAZORCIK, JASON L

ART UNIT

PAPER NUMBER

1791

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	<p>Application No. 10/813,435</p>	<p>Applicant(s) POSTUPACK ET AL.</p>	
	<p>Examiner JASON L. LAZORCIK</p>	<p>Art Unit 1791</p>	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 27 February 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Eric Hug/
Primary Examiner, Art Unit 1791

/J. L. L./
Examiner, Art Unit 1791

Continuation of 11. The request for reconsideration does NOT place the application in condition for allowance because:

Applicant's arguments presented in the amendment after final dated February 27, 2009 have been considered but are deemed to be unpersuasive for reasons set forth in the Official Action dated October 27, 2009 and as briefly summarized herein.

First, Applicant alleges that the GB 164 patent does not teach substrate immersion times of less than 15 seconds and that "a fair reading of the GB 164 patent, as a whole, ... does not in any way disclose or suggest the range of 10 seconds or less".

in response and with respect to the "fair reading" of the GB 164 reference, Although the prior art does not explicitly set forth Applicant's particularly claimed immersion period of less than 10 seconds, Applicant was advised that said immersion period would have represented a merely obvious extension over the process explicitly set forth in the prior art. That is, both the prior art process and the claimed invention make use of immersion periods which one of ordinary skill would recognize as significantly shorter than the "typical" processing parameters (e.g. about 3 to 60 seconds for the prior art and the claimed invention versus 1,800 to 14,400 seconds for Applicant's admitted "typical process"). In the context of these "typical" immersion conditions, the claimed and prior art immersion times would be viewed as patentably indistinguishable from each other.

Regarding the predictability of the process, one of ordinary skill in the art would recognize that the degree of temper achieved in a chemically strengthened glass sheet is a direct function of the immersion time or contact time with the molten salt bath (e.g. solid state diffusion). All other variables held constant, a reduction in the immersion time would predictably result in a decrease in the ion diffused layer of the glass substrate and thereby result in a decreased temper effect in the chemically tempered glass sheet.

In view of the foregoing and in the absence of evidence of unexpected results, Applicant was advised that the claimed process conditions of "10 seconds or less" and "about 0.5 seconds to about 30 seconds" would have been derived through no more than routine experimentation and optimization of the prior art disclosed process.

Importantly with respect to evidence, Applicant has failed to provide any convincing showing that a dipping time of 10 seconds or less would not reasonably be encompassed by the GB 164 disclosed processing time of "substantially less than 5 minutes".

In short, Applicant's claimed process time of 10 seconds or less is construed to;

- 1) be wholly encompassed by the broader disclosed dipping time of "substantially less than 5 minutes",
- 2) to yield a predictable extension over the preferred embodiment of dipping the glass sheet for 15 seconds, and
- 3) would have reasonably been derived through no more than routine experimentation over the prior art disclosed process for one of ordinary skill in the art seeking to increase the production rate of tempered glass sheets.

It follows that Applicant's arguments suggesting that the GB 164 reference teaches away from the presently claimed immersion times of 10 seconds or less are not deemed to be persuasive, and the rejection of claims stands as previously presented in the October 27, 2008 Official Action.